THE HON'BLE SRI JUSTICE RAMESH

RANGANATHAN

WRIT PETITION NO. 16694 OF 1997

Date: 06.02.2007

Between:

S.E. Railway Cooperative Contract Society Limited, Visakhapatnam.

... Petitioner.

And

The Presiding Officer, Industrial Tribunal-cum-labourCourt, Visakhapatnam, Visakhapatnam and another.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 16694 OF 1997

ORDER:

Aggrieved by the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.D. No. 50 of 1993 dated 03.06.1994 whereby the petitioners herein were directed to reinstate the second respondent into service with full back wages at Rs.697/- p.m., the present writ petition is filed.

The second respondent filed an application under Section 2A(2) of the Industrial Disputes Act contending that he was working as a Kalasi from 19.02.1976 and continued to work with the petitioner till 15.11.1990. The petitioner herein (second respondent in the I.D) and the first respondent General Manager, South Eastern Railway remained *exparte* on 09.03.1993. On the basis of the evidence of the second respondent workman, and on examining the documents marked as exhibits by him, the Tribunal held that since the management did not produce the enquiry report, and in as much as there was no contra evidence to the evidence of W.W-1, the fact that the second respondent worked in the society was established and since the petitioner management had failed to prove that the

second respondent was terminated from service on completion of the enquiry, the second respondent was entitled to have the benefits and accordingly relief as sought for was granted.

Before this Court, Sri D.V. Sitharam Murthy, learned Counsel for the petitioner, would submit that the petitioner society is virtually defunct. Learned Counsel would seek to make submissions on merits and would state that the second respondent and others had filed O.A. No. 291 of 1991 before the Central Administrative Tribunal requesting the Railways to engage them as substitutes. According to the learned Counsel this fact would itself establish that the petitioner society was defunct. In support of the contention that the *exparte* award of the Industrial Tribunal was liable to be set aside, it is stated that I.A. No. 288 of 1994, to set aside the *exparte* order, sent to the second respondent was returned unserved as he was not residing in the address given in the I.D. Learned Counsel would submit that the second respondent was not interested in pursuing the award, and that on coming to know that he had filed E.P. No. 17 of 1996 the petitioners had approached this Court. It is not as if the petitioner's application to set aside the *exparte* award has been rejected by the Tribunal in which event there may have been some justification for this Court to examine as to whether the Tribunal was justified in

doing so. This writ petition is filed challenging the award in I.D. No. 50 of 1993. Since the petitioners herein remained *exparte*, the Tribunal was left with little option but to go by the pleadings, and the oral and documentary evidence adduced on behalf of the second respondent, in passing the award. The submissions made on merits or the documents placed for the first time before this Court cannot be examined in certiorari proceedings filed against an award of the Tribunal and it is only on the basis of the evidence, both oral or documentary, adduced before the Tribunal would this Court be entitled to examine the validity of the Award that too on very limited grounds. It is not for this Court to take notice of the proceedings of the Administrative Tribunal in O.A. No. 291 of 1991 or to record a finding that the petitioner society is defunct. All these are matters extraneous to the award in I.D. No. 50 of 1993. The award of the Tribunal does not necessitate interference and the writ petition filed, challenging the said award, is dismissed. Needless to state that this order shall not preclude the petitioners from availing such remedies as are available to them in law to have the *exparte* award of the labour Court set aside. The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

6-2-2007

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